

Special Session

Agenda Item #	7
Meeting Date	July 18, 2005
Prepared By	Susan Silber City Attorney
Approved By	Barbara B. Matthews City Manager

Discussion Item	First Reading Ordinance - Recodification of Peddlers and Transient Merchants Article
Background	<p>The recodification of the Peddlers and Transient Merchants Chapter is part of the City's ongoing recodification of the entire City Code. This Chapter, part of Title 8, Business, of the Code, is being presented to the Council independent of the remainder of the Title for ease of consideration and to facilitate prompt revision of the Code. A recent Supreme Court decision creates doubt as to the constitutionality of portions of the current chapter. Additionally, concerns have been expressed by advocacy groups wishing to canvass in the City.</p> <p>During the work session on July 11, 2005, there was some discussion about amending only the section dealing with canvassers and non-commercial solicitors in light of concerns expressed by Erwin Mack, Executive Director of the Crossroads Development Authority. After discussing this matter, staff concluded that it was not reasonable to do so because of the integration of the permitting and licensing requirements in the Chapter. The section dealing with transient merchants can be amended at some future date after further discussion and review by the City Council.</p>
Policy	<p>The revisions to the Peddlers and Transient Merchants chapter are intended to bring the Code in line with recent Supreme Court decisions regarding First Amendment and Commerce Clause limitations on the regulation of door-to-door canvassers, while affording City residents reasonable protection from fraud and invasions of privacy. The changes include the following:</p> <ul style="list-style-type: none"> • Eliminating the permit requirement for canvassers whose primary activity is relaying a message, even if in connection with that activity, they solicit donations or sell merchandise or memberships, or otherwise seek money from residents (canvassers have the option of obtaining a permit) • Expediting the permit/license application process • Increasing the application and permit and license fees to recover a larger portion of the administrative costs associated with such items • Authorizing residents to post their property to prohibit solicitors and making violation of the posting a municipal infraction • Limiting solicitation activity to the hours between 9:00 a.m. and 9:00 p.m.
Fiscal Impact	Undetermined

Attachments	Proposed Ordinance
Recommendation	Consider and vote on Ordinance.
Special Consideration	

Introduced by:

First Reading: July 18, 2005

Second Reading:

Drafted by: Susan Silber

City Attorney

Effective Date:

Draft date: July 15, 2005

ORDINANCE NO. 2005-

**Ordinance Amending Chapter 8.12, Peddlers and Transient Merchants,
of the Takoma Park Code**

WHEREAS, the Council wishes to respect the First Amendment rights of persons wishing to promote ideas, raise money for charitable causes, and conduct business within the City while protecting residents from crime, fraud, and invasion of privacy; and

WHEREAS, recent court decisions have clarified the extent of the City's authority to regulate canvassers and solicitors; and

WHEREAS, the Council finds that the solicitation of money from residents at their homes without prior invitation creates a risk of fraud, particularly when conducted by strangers to the community; and

WHEREAS, the Council intends to consider further the provisions of Chapter 8.12 addressing commercial activity and may amend such provisions in future legislation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that the provisions of Takoma Park Code, Chapter 8.12, are repealed in their entirety and replaced by the following, which shall stand in place of the Chapter being repealed:

**Chapter 8.12
PEDDLERS, CANVASSERS, AND TRANSIENT MERCHANTS.**

Sections:

Article 1. General Provisions

8.12.010 Definitions.

8.12.020 Exemptions.

Article 2. Solicitor's Permit

8.12.030 Required.

8.12.040 Application.

Article 3. License

- 8.12.050 Required.**
- 8.12.060 Application.**

Article 4. Permit/License Requirements

- 8.12.070 Background check.**
- 8.12.080 Fees; duration and expiration; renewal.**
- 8.12.090 Identification badge.**

Article 5. Permit/License Provisions and Procedures

- 8.12.100 Approval or disapproval of applications.**
- 8.12.110 Issuance, content and transferability.**
- 8.12.120 Denial.**
- 8.12.130 Revocation or suspension.**
- 8.12.140 Appeal of denial, revocation or suspension; procedure.**

Article 6. Restrictions and Requirements - Conduct

- 8.12.150 Exhibition of license; sign; records.**
- 8.12.160 Vehicle maintenance; identification displayed; refuse containers.**
- 8.12.170 Use of streets and sidewalks.**
- 8.12.180 Hours of operation.**
- 8.12.190 Exclusion by residents.**
- 8.12.200 Enforcement.**
- 8.12.210 Records of licenses and convictions.**
- 8.12.220 Notice to police of canvassing activity.**

Article 1. General Provisions

- 8.12.010 Definitions.**

As used in this chapter:

“Canvasser” is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of:

1. Attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser attempts to raise money for or against such cause; or
2. Distributing a handbill or flyer advertising a non-commercial event or service.

“Junk or secondhand dealer” means any person, firm or corporation, whether or not a resident or establishment within the city, who engages in the business of buying or selling or solicits for the purposes of buying, selling or obtaining any used material or thing customarily considered as a household item.

“Nonprofit organization” means any organization that is qualified as tax exempt by the Internal Revenue Service.

“Peddler” is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service. A “peddler” does not include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a time different from the time of visit. Such a person is a “solicitor.”

“Permit/license holder” means an individual holding a permit or a person holding license issued under this Article.

“Solicitor” is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of:

1. Attempting to obtain a donation to a nonprofit organization, even if incidental to such purpose there is the sale of some good or service; or
2. Distributing a handbill or flyer advertising a commercial event, service or product.

“Transient merchant” means:

1. Any person, whether or not a resident of the city, who engages in a temporary business of selling and delivering goods, food, wares or merchandise within the city;
2. Any person who engages in a business of selling and delivering goods, food, wares, or merchandise within the city and, in furtherance of this purpose, hires, leases, uses or occupies any temporary building or structure, motor vehicle, trailer, tent, hotel room, lodging house, residential dwelling, street, alley or other place within the city for the exhibition and sale of goods, wares or merchandise, either privately or at public auction.

8.12.020 Exemptions.

A. The provisions of this Article shall not apply to any of the following:

1. Any person who is upon the premises at the request or invitation of the owners or occupants thereof.
2. Wholesalers who sell goods to dealers in such goods.
3. Persons who take orders solely for the delivery of newspapers.
4. Acts of merchants or their employees in delivering goods:
 - a. In the regular course of business; or

- b. To regular customers on established routes.
- 5. Any activity in a City park or public building when the activities at such places are under a permit issued by or to the Department of Recreation.
- 6. Any activity authorized by the City under any provision of the Code or City regulation.

B. Nothing in this Article shall be held to prohibit any sale required by statute or by order of any court, nor to prevent any person from conducting a bona fide auction sale pursuant to law. (Prior code §4-13)

Article 2. Solicitor's Permit

8.12.030 Required.

A. Except as provided in subsection (B), all solicitors must obtain a solicitor's permit from the City Clerk. (Prior code §4-14)

B. No solicitor's permit is required for solicitors who are city residents and who are soliciting on behalf of a nonprofit organization or candidate for public office and are not involved in the promotion or sale of commercial goods or property on behalf of a for-profit business enterprise.

8.12.040 Application.

A. Applicants for a solicitor's permit shall file with the City Clerk, on forms provided by the City Clerk, a signed application giving the following information:

- 1. Name, local and permanent address, local and permanent telephone numbers, age, date of birth, race, weight, height, color of hair and eyes and other distinguishing physical characteristics of the applicant, if any.
- 2. Name and purpose of the cause for which the permit is sought.
- 3. Names and addresses of the organization, if any.
- 4. Period during which solicitation is to be carried on.
- 5. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than traffic violations, the nature of the offense and the punishment or penalty imposed therefor.

B. Applicants shall submit two (2) prints of a recent photograph of the applicant, approximately two by two (2 x 2) inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.

Article 3. License

8.12.050 Required.

No peddler, transient merchant, or junk or secondhand dealer shall engage in such business within the city without first obtaining a license in compliance with the provisions of this Article.

8.12.060 Application.

A. Applicants for a license under this Article shall file with the City Clerk a sworn application, in writing, on a form to be furnished by the City Clerk, which shall give the following information:

1. Name, local and permanent address, local and permanent telephone numbers, age, date of birth, race, weight, height, color of hair and eyes and other distinguishing physical characteristics of the applicant, if any.
2. In the case of transient merchants, the local address from which proposed sales will be made.
3. A brief description of the nature of the business and goods to be sold.
4. If employed, the name and address of the employer.
5. The length of time for which the right to do business is desired.
6. The source and supply of the goods or property proposed to be sold or orders taken for the sale thereof, where goods or products are located at the time the application is filed, and the proposed method of delivery.
7. If a vehicle is to be used in connection with the proposed activity, a description of the same, together with the license tag number.
8. The name of at least two (2) permanent residents of Montgomery County who will certify as to the applicant's good character and business responsibility, or, in lieu of the names of references, other available evidence of the good character and business responsibility of the

applicant as will enable an investigator to properly evaluate such character and business responsibility.

9. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than traffic violations, the nature of the offense and the punishment or penalty imposed therefor.
10. The last counties, cities or towns, not exceeding three (3), where the applicant carried on business immediately preceding the date of application and the addresses from which the business was conducted therein.

B. Applicants shall submit the following documents with their application:

1. Two (2) prints of a recent photograph of the applicant, approximately two by two (2 x 2) inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.
2. Copies of any state and county permits necessary for the applicant to conduct the proposed activity.
3. If employed, credentials from the applicant's employer establishing the employment relationship.

Article 4. Permit/License Requirements

8.12.070 Background check.

Except as provided in Section 8.12.100(G), all permit and license applicants must obtain and submit a personal Criminal Justice Information System (CJIS) criminal background check report to the City Clerk as a supplement to the permit or license application. No application will be considered complete or filed until a CJIS criminal background check report is submitted by the applicant. The report must have been issued no earlier than sixty days before the application is submitted to the Clerk.

8.12.080 Fees; duration, and expiration; renewal.

A. A nonrefundable processing fee of twenty-five dollars (\$25) will be charged to each applicant at the time an application for a permit or license is filed with the City Clerk.

B. Every applicant for a license under this Article shall pay a license fee of three hundred dollars (\$300) a year or one hundred seventy-five dollars (\$175) for a half year. The annual fee shall be assessed for one (1) year from the date of issuance, the half-year fee for six (6) months from the date of issuance.

C. Permits will be issued for a period effective for six (6) months from the date of issuance.

D. All permits and licenses issued under this Article shall expire at 12:00 midnight either six (6) months or one (1) year from the date of issuance, as applicable.

E. Except as provided in Section 8.12.100(G), the same application procedures and requirements apply at the time an applicant seeks renewal of a permit or license.

8.12.090 Identification badge.

A. Every permit/license holder shall prominently display an identification badge issued by the City on his/her person at all times while engaged in activity that requires a license or permit.

B. Canvassers may apply for an identification badge by completing the procedures and paying the fee required for obtaining a solicitor's permit. An application for an identification card shall be approved or disapproved in accordance with the standards for approval or disapproval of a permit, and all provisions of this Chapter regarding the suspension, revocation, and expiration of permits shall apply to identification badges.

C. All City issued identification badges shall remain the property of the City and shall be surrendered to the City upon expiration, suspension or revocation.

D. The identification badge shall show the following:

1. Name and address of the permit/license holder and the entity he/she is representing, if any;
2. Dates of issuance and expiration of the permit or license;
3. One (1) of the photographs submitted by the permit/license holder; and
4. A statement as to whether or not any commission, fee, wages or emoluments are to be expended or received in connection with the permit/license holder's activity within the city.

Article 5. Permit/License Provisions and Procedures

8.12.100 Approval or disapproval of applications.

A. Upon receipt by the City Clerk of a complete application for a permit or license, the Clerk immediately shall refer the application to the Chief Police Officer or designee, who

shall review the application and background check report and institute an investigation of the background check report as he/she deems appropriate for the protection of the public safety.

B. The review of the applicant's application and background check report, and any investigation of his/her application, shall give due weight to any prior violations of City law, conviction for any crimes against person or property, conviction for trafficking in controlled dangerous substances, or judgements based upon fraud, deceit, or misrepresentation.

C. The City may refuse to issue a permit or license upon a finding that the applicant has provided inaccurate information on his/her application or withheld or falsified any information required to be submitted in order to obtain a permit or license.

D. If, as a result of the application, background check report, and investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief Police Officer shall endorse on such application his/her disapproval and his/her reasons for the same, and return said application to the City Clerk, who shall notify the applicant that the application is disapproved and that no license or permit will be issued.

E. If, as a result of the application, background check report and investigation, the applicant's character and business responsibility are found to be satisfactory, the Chief Police Officer shall endorse on the application his or her approval and return said application to the City Clerk, who shall, upon payment of the prescribed license fee when applicable, deliver to the applicant a permit or license.

F. The Chief Police Officer or designee shall endorse the application within two business days after the applicant has filed the application, including background check report required by Section 8.12.070, with the City Clerk. The City Clerk shall issue the permit, license, or identification card to the applicant or notify the applicant of the disapproval promptly upon receipt of the endorsement.

G. An applicant who has submitted a criminal background check report to the City Clerk in connection with a successful application for a license or permit within two years of the submission of his/her application shall not be required to submit a criminal background check report with his/her application.

8.12.110 Issuance, content and transferability.

A. The permit or license shall contain:

1. The signature of the City Clerk.
2. The name and address of the individual applicant or organization, accompanied by a listing of each applicant covered by the permit or license.

3. The class of permit or license issued.
4. The purpose and cause of the permit or kind of goods to be sold.
5. The amount of fees paid.
6. The date of issuance.
7. The expiration date.
8. The license plate number and other identifying description of any vehicle used in the licensed business, if applicable.

B. Each individual solicitor must secure a permit, and each individual peddler, transient merchant, or junk or secondhand dealer and their bona fide employee(s) must secure a personal license.

C. No license, permit, or identification card shall be used at any time by any person other than the one to whom it is issued.

D. The Clerk shall keep a permanent record of all permits, licenses, and identification cards issued.

8.12.120 Denial.

If an application for a permit or license under this Chapter is disapproved, the City Clerk shall promptly notify the applicant, in writing, to that effect. The denial of a license or permit is subject to review by the City Manager as provided in Section 8.12.140.

8.12.130 Revocation or suspension.

A. Permits and licenses issued under this Chapter may be revoked by the City Clerk for any of the following grounds:

1. Fraud, misrepresentation or incorrect statement contained in the application.
2. Fraud, misrepresentation or incorrect statement made in the course of carrying on his/her business as solicitor, peddler, canvasser, transient merchant or junk or secondhand dealer.
3. Violation of any City, county, state, or federal law.
4. Conviction of any crime.
5. Conducting the business of solicitor, peddler, canvasser, transient merchant, junk or secondhand dealer in an unlawful manner or in a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

B. Permits and licenses issued under this Chapter may be suspended during the period a permit or license holder is under investigation for any action identified in paragraph (A) of this section.

C. If a permit or license under this Chapter is revoked or suspended, the City Clerk shall promptly notify the permit/license holder in writing.

D. If a permit or license is suspended for any reason that proves to be unfounded, the permit or license may be extended for a period of time equal to the period of suspension.

E. No person whose permit or license has been revoked under the provisions of this section shall make further application for a permit or license within six (6) months thereafter.

8.12.140 Appeal of denial, revocation or suspension; procedure.

The procedure for the handling of appeals under this Article shall be governed as follows:

A. Any person aggrieved by the action of the City Clerk denying, revoking, or suspending a permit or license shall have the right to appeal to the City Manager.

B. The appeal shall be made by filing with the City Clerk a written statement setting forth fully the grounds for the appeal within fourteen (14) days after receipt of notice of the action.

C. The City Manager shall consider the appeal and provide a final written decision to the applicant within fourteen (14) days after receipt of the appeal.

Article 6. Restrictions and Requirements - Conduct

8.12.150 Exhibition of license; sign; records.

A. Every licenseholder is required to exhibit his/her license certificate at the request of any citizen.

B. Each junk or secondhand dealer shall, in some manner, display a sign showing the firm name, type of business and location address in letters at least two (2) inches in height and plainly legible on each side of any vehicle used.

C. Each junk or secondhand dealer transacting business within the city shall maintain all records of such and shall exhibit them upon demand to any police officer or to the City Manager.

8.12.160 Vehicle maintenance; identification displayed; refuse containers.

A. Any vehicle and everything pertaining thereto used by a licensed vendor shall at all times be maintained in a clean and orderly condition. No portion of the contents shall be deposited upon the street or other public place.

B. Every vehicle shall have the name of the vendor, the location where the vehicle is stored, when not in use, and the Takoma Park license number painted or applied on the vehicle or displayed on a detachable, professional quality sign of either magnetic or other durable and weather proof material, such as metal or plastic, in letters at least two (2) inches in height and plainly legible, affixed on each side of the vehicle on the front doors.

C. Vendors selling from stands or vehicles shall attach to their stand or vehicle the appropriate refuse receptacle(s) as required by the nature of the operation. The contents of each receptacle shall be removed daily by the person in charge of the stand or vehicle to which it is attached.

8.12.170 Use of streets and sidewalks.

No permit holder or licensee shall have an exclusive right to any location in the public streets or sidewalks, be permitted to stop and conduct operation within 50 feet of their vehicle or stand for more than 15 minutes within a single block during a 24-hour period or be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets or sidewalks. For the purpose of this Article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether or not an area is so congested as to impede or inconvenience the public.

8.12.180 Hours of operation.

Canvassers, permit holders and licensees shall only canvass, solicit or conduct business between 9:00 a.m. and 9:00 p.m. each day. These hours of operation shall not apply to solicitations when the person solicited has agreed by previously arranged appointment for a time other than the prescribed hours.

8.12.190 Exclusion by residents.

Any resident of the city who wishes to exclude solicitors, peddlers, and canvassers from premises occupied by him/her may place upon or near the usual entrance to such premises a printed sign bearing the following notice: "solicitors prohibited", which shall prohibit peddlers, transient merchants, junk or second hand dealers and solicitors, or "solicitors and canvassers prohibited", which shall also prohibit canvassers. Such sign shall be at least four (4) inches long and six (6) inches wide and the printing thereon shall be clear and legible. No solicitor, peddler, canvasser, transient merchant, or junk or secondhand dealer shall enter in or upon any premises, or attempt to enter in or upon any premises, where such sign prohibiting their entry is maintained. No person other than the person occupying such premises shall remove, injure or deface such sign.

8.12.200 Enforcement.

A. Any violation of this Article is a Class C offense.

B. Police Officers and Code Enforcement Officers shall require any person seen conducting any activity for which a permit or license is required under this Chapter who is not known by the officer to be duly permitted or licensed, to produce his/her permit or license and identification badge. The Police Department and Code Enforcement Office shall enforce the provisions of this Chapter against any person found to be violating the same.

8.12.210 Records of licenses and convictions.

The Chief Police Officer or designee shall report to the City Clerk all violations of this Chapter. The City Clerk shall maintain a record of each permit and license issued and record the reports of violations therewith.

8.12.220 Notice to police of canvassing activity.

All persons, before conducting canvassing activity that involves the solicitation of money, shall notify the Police Department of the dates they will be conducting such activity within the city, the name of the organization to benefit from the solicitation, the names of the individuals conducting the activity, and the license plate number and state of registration of all motor vehicles to be used in connection with the activity.

Adopted this ____ day of _____, 2005, by roll-call vote as follows:

Aye:

Nay:

Absent:

Abstain:

C:\Agenda Items\07-18-05\PeddlerOrdinance.wpd